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RELATIONS BOARD
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STATE OF NEW YORK PUBLIC
EMPLOYMENT RELATIONS BOARD

Case No., M76-76 CH-016

CONCILIATION

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In the Matter of the Arbitration between the
CITY OF NEW ROCHELLE
and
UNIFORMED FIREFIGHTERS ASSOCIATION, INC.
LOCAL 273 I.A.F.F.
* * * * *

OPINION OF
CHAIRMAN OF
PUBLIC
ARBITRATION
PANEL

Pursuant to the provisions of the Civil Service Law, Section 209.4, Robert D. Helsby, Chairman of the Public Employment Relations Board designated the following individuals on December 27, 1976 to serve as a Public Arbitration Panel in this proceeding:

- Thomas F. Carey, Public Panel Member and Chairman
- Bruce R. Millman, Esq. Employer Panel Member
- Celestine Kelly, Employee Organization Panel Member

The Panel was charged by Section 209.4 to heed the following statutory guidelines:

- (v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel may, but shall not be bound to, adopt any recommendations made by the fact-finder, and shall, so far as it deems them applicable, take into consideration the following and any other relevant circumstances:
 - a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills

The Public Arbitration Panel accepted the stipulation of the Parties that their joint submissions plus their extensive evidence, documentation and briefs would represent the entire official written record of the instant proceedings.

The Parties had previously subjected five (5) issues to improper practice charges. These issues related to recall of officers of equal rank, Health and Safety Committee, selection of vacations while on duty, personal days on holidays and revision in the dispute settlement procedures. All these issues have since been bilaterally resolved with the exception of the Health and Safety Committee. The Arbitration Panel will maintain jurisdiction over this single issue pending an adjudication of the improper practices proceeding.

After the closing of the hearing the Panel met in several executive sessions and deliberated on each of the twenty-three (23) remaining issues, which were all of the issues presented to it in the Petition For Compulsory Interest Arbitration filed by the Employee Organization. The results of these deliberations are contained in the Award issued by the Panel on June 24, 1976. The Panel was unanimous in most conclusions on the issues it was charged to arbitrate. Mr. Millman, the Employer Panel Member, Mr. Kelly, the Employee Panel Member, and the Chairman were able, after thoughtful discussion and review, to agree on most open issues. The Chairman would like to commend both of these gentlemen for the diligent and perceptive manner in which they fulfilled their responsibilities.

In reaching our conclusions, the Panel has been bound by the standards mandated by section 209.4 (c) (v) of the Taylor Law. Accordingly, pursuant to sub-paragraph (d) of the cited section, we have taken into account the Taylor Law's strong policy to encourage parties to negotiate

under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

BACKGROUND

The City of New Rochelle consists of approximately 75,000 residents, and comprises approximately 10½ square miles of private homes, multiple dwellings, business districts, shopping centers, clubs, churches, and schools.

The City maintains a fully paid fire department. The bargaining unit is composed of approximately 175 members consisting of fire fighters, lieutenants and captains.

The most recent agreement between the parties covered the period from January 1, 1975 to December 31, 1975.

PROCEDURES

The Panel conducted its hearings in New Rochelle, New York in February and March 1977. The Employer and the Employee Organization were present and they were afforded full opportunity during this hearing to present evidence, witnesses, and argument in support of their respective contentions.

second year we have considered the entire record before us.

ABILITY TO PAY

The City maintains it is not incumbent upon it "to prove, nor the arbitrators to find, that the City has an inability to pay." Rather, the Panel, in the City's view, must determine, on the basis of the evidence, "what is the City's ability, consistent with the interests and welfare of the public." The City contends that when it cannot afford to pay contract increases, "it must renege. Wages, fringes, and conditions are frozen and even rolled back. Layoffs ensue, services decline, taxes rise to the point of diminishing returns. A cycle of deterioration accelerates." The City submits that its exhibits and testimony document the fact of "a City in trouble, a City in decline, desperately trying to break free of the spiraling tailspin, a City trying to regenerate its commercial tax base now or resign itself to inevitable deterioration. The City should not have to reach the brink of bankruptcy, like its neighbors to the south."

The City acknowledges that New Rochelle is not at bankruptcy, but has had to make difficult and responsible choices in its struggle for survival. It asserts that a healthy city does not take "the politically unpopular move of curtailing services and eliminating as many as 12% of City jobs. A healthy city does not terminate 10 firemen or 16 policemen." The City's declining tax base and prominent vacant storefronts in its commercial center are cited. The City points out that the sales tax imposes a handicap in competing with neighboring municipalities, such as White Plains, and that these "are actions of desperation, a calculated strategy to win a future."

In its brief, the City stresses that the employer's ability to pay must be understood as the ability to pay "from revenues and in a manner ensuring its continued vitality and viability." New Rochelle, the City professes, does not have the ability to pay increases now or later "merely because it can spend cash now rather than invest in its only hope for the future, as it has chosen to do." A review of City Exhibit (C-24) does demonstrate that a substantial portion of borrowed money was used for recurrent expenditures normally chargeable to operating expenses. Ultimately, the City points out, "the burden falls on the home-owning taxpayer." New Rochelle residents are currently taxed at a real rate of 5.56% of real estate value (C-26). Last year, "the tax burden on a New Rochelle citizen increased 9.29%."

A city's tax base is its assessed valuation. New Rochelle's is shrinking. The City recounts that the assessed valuation has declined twice in the last three years. It is less than it was in 1974. From 1971 through 1977 "it rose a total of 7/10ths of a percent." The City contends it "has suffered further blows to its image, self-esteem, its tax base, and its hope for a secure future, as a major downtown department store has left the City as well as a local outlet of a well known coffee shop chain." The City narrates since "taxes could not be raised, borrowing had far exceeded prudent levels, and state aid funds were declining or stagnant (C-25), the City had no choice but to gamble on a sales tax." The Mayor and City Council "unanimously voted an accompanying resolution specifically earmarking the proceeds of the sales tax for (a) reduction of indebtedness, (b) restoration of reserves, and (c) capital projects."

The Union argues that part of these funds should and can be diverted to pay for greater wage increases. The City maintains it was

willing to gamble on a sales tax only in the hope that this revenue would enable the City to "invest in its downtown, reduce the tax burden,and specific legislation was enacted to this end."

The City cites Fact-Finder Marx in his report on the impasse between New Rochelle and the PBA (C-2).

...(T)he proper course ahead for New Rochelle is economy in government, except perhaps in those areas of expenditure designed to make the City more attractive to commerce, industry, and residents, which in turn will help to relieve some of the financial distress. The City's immediate revenues do not meet its current expenditures, despite increasing tax levels....(T)he evidence...makes it imperative to avoid additional expenditures to the extent practicable.

The Union maintains that the City has an ability to pay. The Union points out that the budget for the current year shows that "the City imposed no tax increase upon its citizens." The Union advances that a "great portion of the City's income is being allocated to the redevelopment of the City's downtown area, the Library, Plaza and Main Street improvements to the tune of approximately \$2.8 million during the current fiscal year."

The Union contends that although such projects "are admirable... the City should not plead poverty when faced with legitimate demands from its firefighters who perform the essential services." The Union questions the City's policy that "the sales tax was to be allocated solely to proposed new capital expenditures rather than to provide increases to the City's firefighters and other municipal employees. Such self-serving allocations, if altered only slightly, would easily support the wage increase which the Union seeks for its members."

It is emphasized by the Union that the City's evidence of its

inability to pay is "essentially centered around the claim of the demise of its central business district. The difficulty is that the central business district is only one small part of the City of New Rochelle which has numerous business districts throughout its 10.8 square miles."

The Union estimates the taxable value of the residential, commercial, storage and industrial activities located in the central business district "is approximately \$50 million or 12.5% of the taxable assessed valuation of the City." The Union argues "assuming that what the City says is accurate and that the central business district is indeed in a sad state of affairs.....the ills of the City is centered in a very small area...." and "whatever trouble there is involves a slight fraction of the 12½%." It does appear that no assessment of the City's property has been conducted for some 17 years and that real estate values have increased in the last few years as in other areas of Westchester. The City, undoubtedly as a political choice, has opted not to reassess its property but instead has relied upon the State equalization rate which, of its own operation, increases the full valuation of the City's property for purposes of taxes.

The Union contends that the "constitutional tax margin in the City is relatively good. Whereas the City had a constitutional tax margin of \$36,433 in 1972....in 1975 its tax margin was up to \$793,585" (U-48).

The Union believes that "there is money available, and that the City has the ability to pay the firefighters far more than the Fact-Finder has recommended, and on more equitable terms." The Union advances that New York State law provides for "taxing up to an amount

computed on the basis of the so-called limit, plus debt service" and that "the City has used up much less of the City's taxing power for the budget year 1976 than in past years." The City, the Union proclaims, has almost \$900,000 more as to which it is capable of taxing. Only last year, the City had a constitutional tax margin of \$783,822, \$150,000 less than now - and it was able to afford voluntarily the increases granted in the 1975 collective bargaining agreement."

The principal issue presented to the Panel is that the Union seeks for its membership "a fair and reasonable increase in wages" as well as a betterment of other terms and conditions of employment. The City opposes on its "lack of ability" to pay, which the Union characterizes as "not the City's inability to pay but its lack of desire to pay."

The City consistently maintained in its testimony that with respect to new sources of income, such as sales tax, and with respect to old sources of income, such as state aid and federal revenue sharing, that its policy is to apply a substantial portion of those funds to capital expenditures.

Fact-Finder Marx, in the previously alluded to New Rochelle PBA report (City Exhibit 2), concisely addressed this issue:

"Ability to pay" in the private sector is easy to define. The inability of the entrepreneur, corporate or otherwise, to meet rising costs can be made eminently apparent by his going out of business or by moving to another location where expenses will be lower. Such options -- and such demonstrations of inability -- are not available to a municipality.

"Ability to pay" in a municipality or other government subdivision is frequently no different than "willingness to pay" -- save only in those circumstances where the municipality by law is totally forbidden to assume additional expense. Thus, the City has the ability (i.e., power) to seek to raise tax levels, to curtail other activities, or even to extend its borrowings.

The City's determination to invest substantial monies in capital expenditures, does impact the City's ability to pay, as it utilizes sources of revenue for capital expenditures rather than for general operating expenses, obviously less money is available in its operating budget to pay for increases of employees' salaries. Granted the City may utilize funds in one way rather than another, but it does not necessarily follow that, merely by its policy and determination, the City can unilaterally deny its employees reasonable increase in compensation. It is the determination of "reasonableness" that the Panel must ascertain.

COMPARABILITY

The concept of comparable communities as revealed by the parties in testimony at the hearings was sharply divergent. In its broadest application it could include the surrounding geographical area of Westchester County. Conceivably, the comparison could be limited to Westchester cities, i.e., Peekskill, Rye, Yonkers, White Plains, Mt. Vernon and New Rochelle. The City maintains that "every neutral party to a New Rochelle contract dispute has adjudged White Plains and Mt. Vernon to be the comparable communities. The Union believes that it would be erroneous to consider only White Plains, Mt. Vernon and Yonkers for the purposes of comparability of wages." The Union maintains the Panel should also consider the following communities: Eastchester, Greenville, Rye, Mamaroneck, Hartsdale, Port Chester, Fairview, Scarsdale, Yonkers and Harrison. A comparison of the population and size of the fire-fighting forces in Westchester cities is instructive on this matter:

| <u>City</u> | <u>Population</u> | <u>Approx. Size of Force</u> |
|--------------|-------------------|----------------------------------|
| New Rochelle | 75,000 | 175 |
| White Plains | 50,000 | 173 |
| Mt. Vernon | 73,000 | 130 |
| Peekskill | 19,000 | 30 |
| Rye | 16,000 | 16 |
| Yonkers | 204,000 | 417 (1975) |

The City's argument becomes persuasive in that White Plains, Mt. Vernon and New Rochelle are comparable both in size of population and firefighting force. They are closely situated geographically. Yonkers is many times larger in population and size of force, while Rye and Peekskill are very much smaller. A reasonable interpretation of the data in the instant case would dictate that any question of "comparability" should be limited to the cities in Westchester with special focus on White Plains and Mt. Vernon.

COMPENSATION, THE JOB AND COST OF LIVING

The Union maintains that "when compared to the increase of the cost of living of 6.62% during the year 1975, the 4½% increase proposed by the factfinder does not touch the cost of living increase which eroded the gains of the firefighters during 1975." The City, according to the Union, is "morally obligated to treat its firefighters fairly and, if monies are available, to restore to them the loss they absorbed by reason of inflation."

On the basis of the Taylor Law's guidelines, the Union submits that "the comparison of recent increases, as well as comparability of wages and other conditions, both locally and nationally, the hazards of the employment of firefighters and their recognized high skills and qualifications require more than the increase granted by the Fact-Finder and that an increase of 11.62% during the first year of the contract and

the cost of living increase during 1976, plus \$750, during the second year is fully justified." (The 11.62% is based upon the 6.62% cost of living increase during 1975, to make up for what the firefighters contend they lost through inflation, plus 5% as an increase.)

In 1976, the first grade firefighters in New Rochelle earned \$14,765. The City points out that it also "pays for a fully paid retirement program unequalled in any other job, except for police at a cost of \$5,849.50 per first grade firefighter. The City notes that it also provides Health Insurance coverage (\$790 per man annually) and a uniform allowance (\$250 cash).

In examining the CPI, the City stresses that "In 1976, without any change in the 1975 contract, the firefighters experienced a 2.5% increase in wages, a 7.5% increase in benefits, and a combined total of over \$900 for a first grade firefighter." The City indicates that in January 1976, the wage rate for a first grade firefighter "was \$15,115, as compared to \$13,985 in January 1975, an 8% increase." The City contrasts this with "an increase in the raw CPI of 5.8% from 1975 to 1976!" The City maintains that "No justification for a further increase can be found under any statutory standard."

The City maintains "The total cost to the City for one first grade firefighter for one year is \$22,898 exclusive of overtime. This represents, by the City's calculation, "an increased cost to the City for 1976 over 1975 even without a contractual pay increase" (there was the "rollover" effect of the split increase in the 1975 contract).

The Union argues that "the City's arithmetic is faulty." It claims the salary of \$15,115 for a first grade firefighter "applies to only a firefighter of at least 15 years employment, and only 54 firefighters

qualified out of 138."

The salary of \$14,765, longevity of \$350 (the two of which sub-total to 15,115), \$5,849.50 in pension contributions, health insurance of \$790 (married firefighters) and uniform allowance of \$250 "add up, in the Union's view, to \$22,044.50, not \$22,898 as stated by the City."

The City argues that a firefighter "reports to work 149 times a year, far less than the average City employee or even a school teacher. Approximately half of these times are at night;...Ninety-six percent of the firefighter's paid time is spent on leave, vacation, or standby. During standby....the men may sweep their quarters, polish the engine or repair some equipment, and during the daytime when the weather is good, they may dry out hoses."

The City acknowledges that "no one would deny that when there is a real fire, firefighting is a dangerous and difficult occupation. But fortunately, fires in New Rochelle are few and the New Rochelle firefighter provides what is basically a standby service."

The City further asserts "free market" conditions certainly do not justify an improvement in firefighter wages or working conditions. The City can attract many qualified applicants for the job at present wages and conditions...." In January 1976, the City reports, "601 persons applied for jobs in the force and one-fifth qualified, although there were no openings."

The firefighters, the City claims, "enjoy some conditions of employment largely unique to them, including a shorter work year, high pay, and double to triple compensation for holidays. These conditions directly resulted from the binding arbitration award in the 1975 PBA negotiations." (The firefighters had a "parity clause" in their contract.)

The Union cites statistics (Union-4) which stress the hazards of the firefighters' job. National statistics reveals that 108 firefighters "line of duty deaths" occurred in 1975 (90 deaths per 100,000) and that job related injuries averaged 43 per 100 firefighters. The Union declares "it is because of those hazards and because of the skill of the firefighters in inspections of apartment houses, homes and business that warrants high pay and decent working conditions." It is important to note in the instant case that by the City's own testimony, half of the City's population lives in multi-family apartment dwellings. The presence of such structures requires additional skills and training of the firefighters the City employs. The Union argues that a logical result of the City's argument is that "the City should employ only a few firefighters for a scant number of hours per year. But no one is prescient enough to know when a fire will break out and when citizens need help."

The Fact-Finder in 1975 effectively addressed the "standby" issue when he wrote:

The City has presented testimony and charts breaking down the time spent by members of the unit in actually fighting fires as compared to other duties and plain waiting time. However, a professional fire department is not paid on the basis of actual time spent at the scene of a fire. If the preparedness, inspections and other activities of a department resulted in no fires at all, that would be to the City's benefit. So too, where a fire department has spent months in standby or waiting time and responded to a major conflagration with speed and efficiency, thus saving lives and property, then the compensation for waiting was of great benefit to the community. I must confess that I fail to follow the reasoning of the City in breaking down the hours spent by a firefighter. Since the individual is employed by the year and must work or be available for the minimum weekly hours, he should be compensated properly for his time.

In the instant dispute, the Fact-Finder also recognized the dilemma faced by municipalities when he pointed out:

Because of today's enormous tax burdens municipal officials and taxpayers are of two minds when it comes to the Fire Department. When, fortunately, there are few or no fires and firemen are only standing by, they feel they are paying somewhat excessive compensation. But, should a fire erupt, the expense of maintaining an efficient, responsible, capable Fire Department becomes secondary. Their first concern is to get all the necessary equipment and manpower to the scene of the fire as quickly as possible to minimize potential loss of life and property. The Fire Department is akin to an insurance policy in that you grudgingly pay the premium hoping you never collect on it. In both cases, having an efficient Fire Department and insurance coverage provides "peace of mind" but at a cost.

The City in its wisdom has chosen to provide this important public safety function with a full time manned force. That decision carries with it an obligation to pay adequate salaries for that twenty-four hour public safety service. The "standby" argument must, therefore, be rejected. It is a condition of the City's own design.

On the basis of parity alone, the Union further contends that under comparability, the firefighters of New Rochells are "entitled to a greater increase of their wages than the Fact-Finder awarded, if only to keep their relative standing in comparison with other communities in Westchester." In addition, the Union is seeking "not only parity but also a higher standard of living, and is attempting to keep up with the chaotic increases in the general cost of living."

Obviously there are many areas of disagreement between the parties on the wage issue. The facts elicited at the hearing indicate that the bases for the wage increase recommended by the Fact-Finder was not palatable to either party. The Fact Finder granted a 3% increase each

six months over the term of a two-year contract, commencing January 1, 1976. The Union claims this does not reflect the cost of living and comparability with other communities in Westchester.

The Panel affirms that the change in cost of living must also be one of the basic arbiters of economic justice in collective bargaining. For the period from January 1, 1975, when the personnel in the unit received their last across-the-board salary increase, to December 31, 1975, the contract expiration date, the Consumer Price Index (the "CPI") did rise by 6.6%. However, the increase in the CPI from January 1, 1976 to December 31, 1976 was only 4.2%. From one line of argument, this figure could conceivably support an increase in basic compensation of 6+% for one year or 10.8% for the two year period.

The Union testified that "major settlements in the private sector during the first three months of 1976 showed wage increases of 8.8% (U-34); the first 6 months, 8.4% (U-35); the first 9 months, 8.9% (U-36); and the full year of 1976, 8.3% (U-37). The estimated all-industries initial median wage increase negotiated in 1976 was 44.5 cents per hour -- which based on the Union's past working hours would amount to an increase of 6.1% (U-38)."

Firefighter salary increases on top step in 1976^a for negotiated and arbitrated contracts in New York State (excluding New York City) which were received in PERB through October 15, 1976, indicates the following:

| | No. of Agreements | No. in Department | Top Step ^b | Weighted Average | |
|------------|-------------------------|-------------------------|-----------------------|------------------------------|-----|
| | | | | Increase Over 1975 Amount | % |
| Total | 34 | 2,610 | \$12,392 | \$ 906 | 8.0 |
| Negotiated | 28 | 1,392 | 11,917 | 800 | 8.1 |
| Arbitrated | 6 | 1,218 | 12,936 | 937 | 7.8 |

^a Includes all increases in fiscal years starting November 1, 1975-Oct.30,76

^b Salary after consecutive increments are received generally 3-5 years.

The Panel is cognizant that fact-finding reports issued in White Plains and Mt. Vernon recommended increases of 8.5% and 6.5%, respectively.

The Panel also examined existing and proposed salaries for first grade firefighters in these two comparable communities.

| | <u>7/1/75</u> | <u>7/1/75</u> | <u>1/1/76</u> | <u>7/1/76</u> | <u>1/1/77</u> | <u>7/1/77</u> |
|--------------|---------------|---------------|---------------|---------------|---------------|---------------|
| New Rochelle | \$13,985 | \$14,765 | \$15,207** | \$15,663** | \$16,132** | \$16,616** |
| Mt. Vernon | | \$14,600 | \$15,200* | \$15,800* | | |
| White Plains | \$14,010 | \$15,200* | \$15,200* | | | |
| | (7/1/74) | | | | | |

*Adopted

** Fact-Finder's recommendation

The recently submitted Fact-Finder's report for the City of New Rochelle and the members of its PBA unit was also reviewed. That recommendation provided for a 6% increase effective July 1, 1976 and a 6% increase effective July 1, 1977. This wage proposal provides a two year salary adjustment of 12%. This is identical to the previously referenced firefighters Fact-Finder's recommendation in the instant dispute except for the rate of implementation.

These aforementioned "adjustments" translate into salary modifications " effective July 1, 1976" of \$890. for New Rochelle police, \$1200. for Mt. Vernon firefighters, and \$1190. for White Plains firefighters.

The Panel, in the instant proceeding assessed and evaluated both the Union's claim for what it deems an equitable wage increase, and the City's contention of its financial plight, as it sought to develop an equitable award. The Panel recognizes the need to distinguish between a "real inability to pay" and a "relative difficulty to pay" based upon standards reflected in the statute. The questions of wage comparability

and cost of living have also been examined in the process.

Clearly some comprehensively reasonable salary movement was warranted when all the facts before the Panel were considered.

THE WORK WEEK, HOLIDAYS AND VACATIONS

These three contract issues have an intrinsic interrelationship in both contract construction and contract administration. That they are significant dispute issues becomes manifestly clear when the wide range of testimony, analyses, exhibits and documentation submitted by the parties are examined.

The essence of the problem is contained in the contract language itself and its prior application.

Article XIII, paragraph A of the contract which expired December 31, 1975 provided for vacations as follows:

| | |
|---|--|
| After one (1) year through the fifth (5th) year of service | 80 tour hours, plus 88 tour hours for holidays, equalling 29 consecutive calendar days vacation. |
| From the sixth (6th) year through the eleventh (11th) year of service | 120 tour hours, plus 88 tour hours for holidays equalling 36 consecutive calendar days vacation |
| After twelve (12) years of service | 160 tour hours, plus 88 tour hours for holidays equalling 43 consecutive calendar days vacation. |

The City proposed that "paid time off in lieu of holidays be eliminated from the contract." The City recommended that any reference to consecutive calendar days be eliminated "as having contributed to a situation wherein firefighters are receiving a windfall for which they never negotiated." The Fact-Finder recommended that "Paragraph A of Article XIII be revised so as to eliminate the words 'plus 88 tour hours

for holidays' and the proper number of consecutive calendar days be recomputed."

The Union believes that "recomputation" of consecutive calendar days is achieved by the subtraction of 11 days from the 29, 36 or 43 "consecutive calendar days" presently set forth in the contract.

The City submits that the Fact-Finder "could easily have converted "88 tour hours for holidays" into "11 consecutive days" and directed the parties to make that subtraction had he so intended." However, the City points out "he directed the parties to make recomputation." The Panel understands that the Fact-Finder's direction to the parties to make a "recomputation" is intricately bound up with the problem that "160 tour hours, plus 88 tour hours..." does not equal 43 consecutive calendar days as recited by the contract. It is the City's position that the Fact-Finder left the language, "160 tour hours equalling...consecutive calendar days vacation, intending that the parties calculate or compute the number of calendar days which would result from a vacation of that many tour hours."

The Union counters that the Fact-Finder refused to recommend, as proposed by the City, complete elimination of the "consecutive calendar days" language. The City submits that this merely signifies the Fact-Finder's intention that "a vacation of consecutive days be preserved; it does not mean that the Fact-Finder intended that 11 days simply be subtracted from the total number and thus only 58 hours of work time be restored."

The City revealed at the hearing, how "a departmental practice was developed and implemented by deputy fire chiefs, when they were part of this bargaining unit, whereby the consecutive calendar days was applied literally without the parameters of the 'tour hours' prescription so as

to subvert the plain meaning of the contract and its clear intent." Whether intended or not, the Panel perceives that a consistent past practice, known to both parties, has emerged which the Panel can not ignore. In practice, Union members have requested and been granted vacations of 29, 36 and 43 consecutive calendar days vacation.

The Union argues that the purpose of the "consecutive days" language was to give the firefighter the same "kind" of vacation as a 5-day employee.

The Fact-Finder noted the City argued its proposal would accomplish an efficiency for the City by eliminating the "complicated, inconsistent and highly inappropriate calendar day measurement." The City also proposed other reductions and revisions of vacations, including eliminating paid time off in lieu of holidays, providing for split vacations where this privilege does not result in extra time lost for the City and reserving the City's right to schedule vacations other than at the start of a tour where this is necessary. The City maintained that its vacation proposals "merely restores what it never intentionally surrendered and where the comparable cities already receive what is here proposed."

The Fact-Finder granted the request of the Union to grant pro rata vacations to fire fighters who have not worked a full year, stating "there should be no objection to so stating in the contract." He further noted:

This Fact-Finder in revising the holiday provision eliminated adding vacation days in lieu of holidays to the vacation schedule, as requested by the City.

Inconclusive evidence was presented by both sides to have the Fact-Finder recommend any other requested revisions of the vacation provision.

The Union understands the last quoted paragraph to mean that

"all of the proposals of the City were rejected" with the exception of eliminating the addition of vacation days in lieu of holidays to the vacation schedule, since he recommends that those be paid. Thus, the Union "believes that when the Fact-Finder recommended:

Paragraph A of Article XIII be revised so as to eliminate the words "plus 88 tour hours for holidays and the proper number of consecutive calendar days vacation pay computed

what he meant was to exclude eleven of the consecutive calendar days vacation so that an employee would receive 32 days instead of 43 days."

The City, however, argues that recomputation of consecutive calendar days vacation means that it must be computed by the number of tour hours actually off duty. The Union believes its members "have paid their price," in past collective bargaining agreements between the parties, and that "the agreement of 43 days, which has consistently been applied by the parties, should continue." The Union also notes that "if the City's interpretation were followed, the firefighters employed by the City would receive even less vacations than those employed in White Plains, Yonkers and Mt. Vernon."

The City counters by maintaining that a 248 hours vacation "is the equivalent of 43 consecutive calendar days" and that "248 tour hours is not equal to 43 consecutive days vacation for a firefighter." It is clear in the City's view of the contract language "that the entitlement is in hours and the explanation is in days." The City submitted proposals designed "to eliminate the triple compensation for holidays which results from annual salary (Article IX), time added to vacation (Article XIII) and holiday compensation as interpreted by the Union.

Article XII-D of the 1975 Firefighter contract, is the firefighters' negotiated "substitute" for 1975 which provides that this

"holiday pay" be distributed equally to all unit employees. The Union Argues that this distribution be continued in 1976. The City counters that the provision was "a one-time lump sum distribution" based upon the "language of the stipulation of agreement signed by the parties (U-16B, Paragraph 4).

The Fact-Finder in the instant dispute recommended retention of Paragraph B and C provisions of the Article XII of the 1975 Firefighter contract and a substitution of a new Paragraph A provision calling for pay - for each of the eleven contractually designated holidays - for all employees, whether or not the employee actually works the holiday. The recommendation was made because of the recognized need "to operate the departments without interruption," while providing equitable compensation to "Firefighters for the holidays provided in their contract." As previously mentioned, the Fact-Finder also recommended that the time off in lieu of holidays be eliminated from the vacation schedule. The Fact-Finder took notice of the saving to be achieved by the City were it taken into consideration in his recommended "wage and fringe benefit increase."

The City judges the Fact-Finder's recommendations are not fair and equitable. It contends "an employee who receives an annual salary has pay for holidays built into his salary structure. Any additional compensation for holidays is merely gratuitous."

The Union disagrees with the argument "that holidays under the 1975 contract are paid for by triple compensation and that its agreement in 1975 was a one-time payment." The Union maintains the City offered the same agreement on holidays to the Union as it offered to the PBA.

The Union requested a revision of the PBA clause so as "to benefit all firefighters irrespective of whether they worked or not." The Union claims that "by its suggested revision, in no sense intended to make a continuing obligation for the policemen into a one-shot deal for the firefighters, as the City now suggests."

The Union submits that the City "has shown nothing which would demonstrate that its position is at all accurate or was intended. In any event holidays are not paid for three times even under the best reading of the 1975 agreement. At best they are paid for 2½ times and it is certainly not unusual in any contract of which we are aware to pay for a holiday double time." The Union maintains that the White Plains firefighters "have been paid double time for holidays for years." and in other communities "firefighters have been paid not for 8 hours but 12 hours." The Union maintains that the holiday provision of the last contract was "justified by comparability and was neither gratuitous nor unfair to the City."

The City indicates that "all firefighters would be paid twice for holidays, whether or not they work the holiday. It attempts to remedy one inequity by replacing it with another." The City urges that all forms of multiple compensation for holidays - whether or not worked - be eliminated. Conversely, the Union believes that "its proposal for an increase in holidays should be granted."

The City submits "that the Fact-Finder's recommendation of a 40 hour work week should be adopted.

The City indicates it has shown "that New Rochelle Firefighters

work less for more pay," and in view of the City's fiscal plight, "it is not asking too much from the firefighters to require that they work an average of 40 hours per week."

The City somewhat paradoxically points out "the firefighters may argue that such an increase in the work week effectively reduces the wage increase recommended by the Fact-Finder and justifies a larger increase."

The City submits that "the City's blue color workers, recognizing the City's financial crisis, have agreed to far greater productivity increases in return for wage increases substantially less than those recommended by the Fact-Finder for this unit."

The City further submits that since they provide "primarily a standby service, the firefighters' actual work load will not be substantially greater (unlike, for example, the City's sanitation men)."

The Union professes that it is "patently unfair to increase the firefighter's work week from 39.2 hours a week to 40 hours per week." No matter how the City "may attempt to avoid and evade," the Union attests that in the clear language of other (City) contracts, "the fact remains that the City's police work 35.5 hours per week, the civil servants 35 hours per week (with additional summer hours off), and the sanitation men work until their job is completed, which is far less than a 7-hour day." The Union propounds the work week was "freely established through collective bargaining, and there is no cogent reason why this Panel should now adopt a proposal which will permit the City to renege on its prior "good faith" agreement."

For all of the foregoing reasons, the Union submits "that the findings and recommendations of the Fact-Finder were erroneous and should not be adopted." Instead, the Panel "should award a larger

wage increase, without reducing the vacation periods and increasing the work week."

The Panel was unanimous in subscribing to and endorsing the previously cited principles behind the Fact-Finder's recommendation on the "holiday-vacation" reduction. In essence, it provides that fire-fighters shall henceforth be paid for holidays (whether worked or not) in lieu of receiving compensatory time off for holidays (which time was previously added to vacation). The City would be paying each fire-fighter eleven additional days pay for an additional 88 tour hours of work.

The Panel had much more difficulty in addressing the "recomputation" question left open by the Fact-Finder. The partisan advocates on the Panel tested a wide range of alternatives with the Chairman in order to seek a mutually acceptable resolution. The dichotomy of the parties focuses on the method by which the "88 tour hours (or eleven days) for holidays" are to be subtracted in Article XIII, paragraph A. The differences in comparative points of view are best illustrated by the following:

| <u>Present "Practice"</u> | <u>Delete Holidays</u> | <u>Vacation Balance</u> | |
|---|-------------------------|-------------------------|-------------------|
| | | <u>City View</u> | <u>Union View</u> |
| 1-5 years of service 29 consecutive days | 11 days (88 tour hours) | 13 days | 18 days |
| 6-11 years of service 36 consecutive days | 11 days (88 tour hours) | 19 days | 25 days |
| After 12 yrs of service 43 consecutive days | 11 days (88 tour hours) | 26 days | 32 days |

In essence, the pivotal question is whether "tour hours" or the "consecutive calendar days" has contractual supremacy and is to be controlling. The City's contention that its managerial agents improperly interpreted and applied this contractual provision is not sufficient

grounds to completely set aside or ignore this mutually understood past practice. The City's continuous past practice of approving and awarding vacations of 29, 36 and 43 days has become a term and condition of employment by the City's own action. The parties disagree, however, as to whether or not this was their joint intention during negotiations.

An analysis of vacation benefits enjoyed by other comparable units indicates that White Plains firefighters receive four weeks vacation after ten years of service, while Mt. Vernon firefighters receive three weeks vacation after only one year of service. In New Rochelle members of the police unit receive four weeks vacation after ten years of service.

A dispassionate analysis of the problem and data at any level reveals that the interest of both can not be perfectly reconciled. In an effort to seek an equitable, though albeit not perfect resolution, a compromise, proposed by the Chairman, was reviewed by the Panel and after considerable debate was accepted, with considerable reluctance by both partisan advocates, as a plausible alternative.

Simply stated, the proposal provides the following:

| | |
|-----------------------------|---------------------|
| 1-5 years of service | 14 consecutive days |
| 6-11 years of service | 21 consecutive days |
| 12 or more years of service | 28 consecutive days |

It provides a vacation schedule comparable to the police in New Rochelle who receive vacations of two weeks (1-5 years), three weeks (5-10 years), and four weeks (over 10 years). It is also somewhat similar to the vacation schedule of the firefighters in Mt. Vernon and in White Plains previously cited.

The Chairman could not agree with the very strong arguments made by the Employers representative on the Panel, who felt that "the City's

burden in paid compensatory time off has not been reduced by the same number of hours which it is now going to be paying for." Actually the City does receive at least a "one for one" benefit, since 88 more tour hours are to be worked. What the City does not realize is the full benefit of its interpretation of the "tour hours" rather than "consecutive calendar days" computation. A strict application of the past contract administration could have increased the liability of the City by 3-4 more vacation days for each category beyond the compromise schedule which is being proposed.

The Chairman is further persuaded about the equity of the proposed compromise in light of the fact the Fact-Finder recommended that the City of New Rochelle grant its police unit a twelfth paid holiday, whereas no increase in that benefit is being proposed for the firefighters.

The case of the extension of the work week from 39.2 hours to 40 hours a week as recommended by the Fact-Finder, however, is another matter. The Chairman raises a threshold question as to the propriety of modifying a benefit achieved through negotiation and substituting the arbitration process to resolve the issue. It is the opinion of the Chairman that such a contract change should be negotiated by the parties. For this reason I respectfully disagree with the Fact-Finder who recommended the increase of the work week. The parties in prior negotiations struck a balance and subsequently agreed on this work week.

The partisan Panelists sought to strike a balance on this issue in relation to the proposed adjustments in holidays, vacations and wage benefits. The Union partisan on the Panel estimates that the extra 8/10 hours per week per man represents 40 hours a year per man or a "loss to the

Union" of \$50,780. Conversely, the City gains by the proposed elimination of Section D of Article XII. This represents a potential savings of \$52,706 per year. The current compensation for the 5.2 average holidays worked per man per year is to be incorporated and subsumed under the revised holiday contract language (i.e. Paragraphs A and D are eliminated and a revised Paragraph A calling for 11 paid holidays and an increase of 88 tour hours of work).

With the aforementioned as background and rationale, the Panel will subsequently offer resolutions and awards for the many proposals set forth by both the Union and the City.

GENERAL CONCLUSION

The Panel Chairman was particularly impressed with the rather clear assessment of the City's economic health, fiscal direction and future aspirations contained in the City Manager's November 10, 1976 budget message for Fiscal '77 to the Mayor and Members of the New Rochelle City Council. It is somewhat dispositive of many of the "ability to pay" questions before the Panel and is hereby quoted at some length because of this fact:

Concurring with the policy intention of the Mayor and Council, I am pleased to be able to propose a budget requiring neither additional property tax revenues nor major reductions in municipal operations and City-wide services. If the adopted budget of 1976 expressed the desire and determination of our City to achieve fiscal stability and to provide a realistic level of services in an era of unparalleled inflationary pressures, binding arbitration awards for Police and Fire personnel under the terms of the State Civil Service Laws, and increased demands by our citizenry, this budget estimate for 1977 reflects both the confidence that we have established in our financial structure and the commitment we have made to the on-going development of the City of New Rochelle.

This is evidenced by the inclusion of a capital budget financed primarily through sales tax revenues which allows us to operate on a pay-as-you-go basis and eliminates all bonding except for major capital projects such as the new City Yard and tax certiorari settlements.

Like most other cities, ours is still facing a period of economic uncertainty.....

Nevertheless, with careful allocations of new revenue generated by the recently imposed sales tax and with a number of internal efficiencies and reorganization in the municipal government, New Rochelle will be able to maintain the momentum of our development plans, to upgrade the productivity of the administrative system, to continue the re-organization of the City government, and even to increase the level of City-wide services in four areas that our citizens have been much concerned about: public safety, sanitation, recreation, and library resources.

In responding to the legitimate needs of our residents for improved services, we have been mindful of two major considerations. First, the elected representatives of our citizenry in enacting a sales tax pledged to prioritize the expenditure of new revenues in a downtown revitalization program. Therefore, our aim now is to provide visible evidence to potential developers and shoppers that New Rochelle intends to initiate progressive projects to stimulate commercial activity in its central business district. A city cannot arrest incipient stages of urban decline by standing still. We wish not merely to maintain our present conditions but to alter them significantly for the better.....

The revenues and expenditures projected for 1977 show a major increase of \$7.4 million due mainly to the fact that for the first time a sales tax and its concomitant expenditures have been incorporated into the City's budget estimate. Of the estimated total revenues of \$32,736,515, the 2% sales tax portion amounting to \$5,000,000 represents the majority of the increase over the current year's revised budget. Other significant factors accounting for the increased revenues are state aid and contributions from the Tax Stabilization Fund.

We are estimating an increase in state aid of \$252,000 over the 1976 projected total of \$4,293,000 (which in itself represents a significant increase of \$440,000 over the 1976 revised estimate). Federal assistance, primarily in the form of LEAA Community Service Workers, will rise by \$50,000 over the current year's totals....

Although our reliance on property taxes is statistically diminished from over 60% in 1976 to 48%, we must not ignore the persistent problem of the static level in our real estate assessments. In fact, we are facing a small assessment roll decline in 1977, amounting to 2% or \$737,680. Much of our long-range planning has been aimed at a reversal of the trend toward a decreasing property valuation base, but we do not anticipate any turn-about earlier than 1979, and general improvement depends a great deal on the redevelopment plans already underway.

Furthermore, depending on the outcome of wage negotiations or binding arbitration agreements for police and firefighters covering both 1976 and 1977, the City may be forced to consider additional layoffs that are not presently warranted in this budget. But, this budget is not a map of the future. It is a diagnosis of where New Rochelle is here and now, not necessarily a prognosis of where it will be and how it will be.

The only optimism contained here is grounded in the fact that during a precarious time for municipalities, New Rochelle is not only enduring but progressing. As was the case with Mark Twain, reports of the demise of the cities may well be premature. However, noises can still be heard. Whether these noises are the sounds of hope or the din of death rattles remains to be seen. But, with respect to our City, this budget should reflect what we believe to be the case.

On the basis of wage comparability, and cost of living adjustments, and giving due consideration under all the circumstances, to the financial ability of the City, the Panel has fashioned its accompanying Award. Extensive facts and evidence has been carefully reviewed and weighed at considerable length by the Panel. A balance between the justifiable demands of the Union and the needs of the City to maintain its economic stability has been sought, and hopefully achieved, in the Award.

It is the belief of the Panel that procedures followed in the instant proceedings reflect the principle referenced in the Matter of Haverstraw 9 PERB 3063, when PERB said:

"Interest arbitration is not, and was not, intended as an alternative to, or substitute for, good faith negotiations. Rather, it is a procedure of last resort in police and fire department impasse situations when efforts of the parties themselves to reach agreement through true negotiations and conciliation procedures have actually been exhausted."

The Award addresses what the Panel perceived as the critical issues in the impasse.

The Panel spent considerable time exploring and testing a wide range of alternatives in an effort to identify a viable multi-year settlement with mutually acceptable terms and conditions.

Based upon the various factors which Section 209.4 charged the Panel to consider, it is my opinion that the Award of the Panel was

fair, equitable and warranted by the evidence presented at the Arbitration hearings.

A handwritten signature in cursive script, appearing to read "Thomas F. Carey", written over a horizontal line.

THOMAS F. CAREY
Public Panel Member and Chairman

DATED: June 1977

STATE OF NEW YORK,
PUBLIC EMPLOYMENT RELATIONS BOARD
CASE NO. M76-76

* * * * *
In the Matter of Impasse Between
CITY OF NEW ROCHELLE, NEW YORK
and
UNIFORMED FIREFIGHTERS ASSOCIATION, INC.
LOCAL 273 I.A.F.F.
* * * * *

AWARD OF
PUBLIC
ARBITRATION
PANEL

ARBITRATION PANEL

THOMAS F. CAREY, Chairman, Public Panel Member
BRUCE R. MILLMAN, ESQ., Employer Panel Member
CELESTINE KELLY, International Assn. of Firefighters

APPEARANCES:

CITY

JOEL H. GOLOVENSKY, ESQ. Counsel
GEORGE BARTELS Assistant City Manager
WALTER BELL Fire Commissioner

FIREFIGHTERS

BENJAMIN SCHLESINGER, ESQ. Counsel
PATRICK O'CONNOR President, Local 273
JACK WILLIAMS Past President
SALVATORE CORDARO Secretary-Treasurer
GERARD VAN PELT Negotiating Team
RAYMOND KIERNAN Negotiating Team

M 76-76

The undersigned Arbitrators, having been designated pursuant to the provisions of Section 209.4 of the New York State Civil Service Law, and having duly heard the proofs and allegations of the parties, hereby make the following

A W A R D

The terms and conditions of employment specified as "not agreed upon" in the petition for Compulsory Interest Arbitration filed by the Association are decided as follows:

A W A R DISSUE 1: Wage Increase

DETERMINATION: Taking into consideration all of the factors previously referenced in the accompanying Opinion, the Panel determines that the salaries for unit members shall be adjusted as follows:

- a) Effective July 1, 1976 an across the board increase of 6%.
- b) Effective January 1, 1977 an across the board increase of 3%.
- c) Effective July 1, 1977 an across the board increase of 3%.

The net result of this determination will be to bring the salary of a New Rochelle firefighter with four or more years of service to \$16,617 (excluding longevity) effective July 1, 1977. The cost to the City will be approximately \$443 per man in fiscal 1976 and approximately \$712 per man in fiscal 1977.

ISSUE 2: Increase in Officer's Wage Differentials

DETERMINATION: The evidence submitted before this Panel was not sufficiently persuasive to warrant a change at this time. It is determined that the differentials shall remain unchanged and the Union's request is, therefore, DENIED.

ISSUE 3: Increase in Longevity Payments

DETERMINATION: The Panel determines that whatever monies are available should, for the most part, be used to adjust the basic wage schedule, and the Union's request is, therefore, DENIED.

ISSUE 4: Meal Allowance

DETERMINATION: (see Issue #3 above) The Union's request is, therefore, DENIED.

ISSUE 5: Increased Uniform Allowance

DETERMINATION: Both the request of the Union for "a \$100 increase" and that of the City for "a sharp decrease" are DENIED and the current provision shall remain unchanged.

ISSUE 6: Holidays

DETERMINATION: That Article XII of the Agreement shall be revised as follows:

- a) Paragraph "B" and "C" remain unchanged except that the language "eighty-eight (88) tour hours referred to in the next Article" shall be deleted from Paragraph "B."
- b) The existing Paragraphs "A" and "D" shall be deleted effective December 31, 1976. Prior benefit under Paragraph "D" above (i.e. payment for holidays worked) is to be paid retroactively for the 1976 calendar year.
- c) A new Paragraph "A" shall be inserted which shall read:
 Inasmuch as the working schedule remains unaffected by holidays, members of the bargaining unit shall be paid an additional day's pay for each and every holiday provided for herein, whether a member actually worked any portion of any holiday or not. Holidays, as specified in Paragraph "B" below, will be paid in the first pay period of June and in the first pay period of December for preceding accrued holidays. Each holiday shall be paid at the rate of 1/10th of the bi-weekly rate of pay.

d) The foregoing determination (Paragraph C) shall become effective January 1, 1977. Unit members who have already taken compensatory vacation time shall not be affected. Those who have not as yet taken said compensatory time by the date of this Award shall be paid in accordance with the revised provision.

ISSUE 7: Dental Plan

DETERMINATION: The dental plan benefit proposed by the Finder was withdrawn during the instant proceedings in the interest of other more pressing terms and conditions of employment.

ISSUE 8: Revision of Major Medical Benefits Plan

DETERMINATION: (see Issue #3 above) The Union's request is DENIED.

ISSUE 9: Welfare Fund

DETERMINATION: (see Issues #3 and #7 above) The Union's request is DENIED.

ISSUE 10: Unused Sick Leave

DETERMINATION: The evidence submitted before this Panel was not sufficiently persuasive to warrant a change and it is, therefore, determined that the Union's request is DENIED.

ISSUE 11: Vacations

DETERMINATION: That Article XIII of the Agreement shall be revised as follows:

A. All employees covered by this Agreement shall be entitled to annual vacation leave in conformity with the following schedule, but no vacation leave shall begin on an "off tour day" unless requested by the employee:

| | |
|--|----------------------------------|
| After one (1) year through the fifth (5) year of service | 14 consecutive calendar days |
| From the sixth (6) year through the eleventh (11) year of service | 21 consecutive calendar days |
| After twelve (12) years of service | 28 consecutive calendar days. |

B. Scheduling split vacations shall be permitted. However, in no event shall this result in a greater loss of man hours for vacation than is provided in Paragraph "A" above.

C. Remains as per present Agreement.

D. If an employee has been employed less than one (1) year to the date of the vacation qualifying period, said employee shall be entitled to one day of vacation for every full month of employment.

ISSUE 12: Call In and Call Back

DETERMINATION: (see Issue #10 above) The Union's request is DENIED.

ISSUE 13: Overtime

DETERMINATION: That Article XI, Paragraph A be revised and the following sentence be added: The EMPLOYER agrees that it will maintain a rotating list for all overtime assignments except during fire emergencies or where conditions constitute a continuing condition which must be covered with a more regularized assignment.

ISSUE 14: Severance Pay

DETERMINATION: That Article XIV, Paragraph A shall be revised and the following sentence added: Employees eligible for "Special Severance Vacation Leave Pay" shall not be denied such benefits for arbitrary or capricious reasons.

ISSUE 15: Bonus For Drivers and Tillermen

DETERMINATION: (see Issue #3 above) The Union's request is DENIED.

ISSUE 16: WashUp Time

DETERMINATION: (see Issue #3 above) The Union's request is DENIED.

ISSUE 17: Acting Out of Rank

DETERMINATION: That a new article shall be added to the Agreement which shall read as follows:

That members of the unit below the rank of Captain will be paid for each day after they have worked an out-of-title assignment at the rate of the higher position they temporarily occupy. A man shall be deemed to "act out-of-title" whenever he shall be required to perform duties in excess of or in addition to those required of his rank and appropriate to the next higher rank.

Consideration will be given to seniority and the exigencies of the situation in designation of out-of-title assignments. For the purpose of computing "days" out-of-title assignment, a member shall be deemed to have earned a "day" whenever he shall serve out-of-title for more than two hours during any one regular tour. Payments will be made at the same time that overtime is paid.

ISSUE 18: Reimbursement To City--Payroll Changes

DETERMINATION: (see Issue #10 above) The City's request is DENIED.

ISSUE 19: Clarification of Rules and Regulations

DETERMINATION: (see Issue #10 above) The City's request is DENIED.

ISSUE 20: Compute Leave Benefits in Hours Not Days

DETERMINATION: (see Issue #10 above) The City's request is DENIED.

ISSUE 21: Contractual Clarification--Article VIII
Past Practices and Conditions of Employment

DETERMINATION: Since the City did not demonstrate that it was harmed by this provision, the City's request is DENIED.

ISSUE 22: Work Week

DETERMINATION: The present work week of 39.2 hours for New Rochelle firefighters is the result of prior negotiations and subsequent Agreements between the parties. For this reason, and for the rationale on this issue contained in the accompanying OPINION, this request of the City to extend the work week to 40 hours is DENIED.

ISSUE 23: Delete Computation For Inter-Departments
Communications Written During Off Duty Hours

DETERMINATION: (see Issue #10 above) The City's request is DENIED.

DURATION

DETERMINATION: The Panel determines that the contract shall be

effective from January 1, 1976 and shall be in effect until and including December 31, 1977.

RETROACTIVITY

DETERMINATION: The terms and conditions of the previous contract not already changed by the parties or changed by the AWARD shall continue in force. All benefits pertaining thereto shall be retroactive for the period stipulated under duration cited above.



THOMAS F. CAREY
Public Panel Member
and Chairman

For the City, I dissent from the DETERMINATIONS on Issue #22 and that portion of Issue #6 making Article XII D effective during the 1976 calendar year.



BRUCE MILLMAN, ESQ.
Employer Panel Member

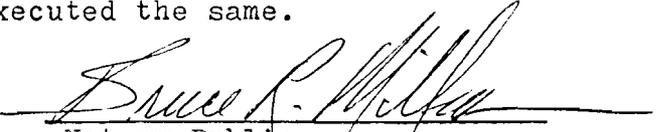


CELESTINE KELLY
Employee Panel Member

DATED: June 24, 1977

STATE OF NEW YORK)
COUNTY OF ~~NASSAU~~) SS:
~~QUEENS~~

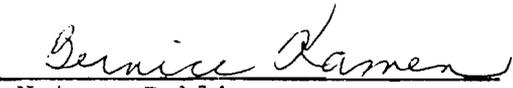
On this 24th day of June, 1977 before me personally came and appeared THOMAS F. CAREY, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


Notary Public

BRUCE R. MILLMAN, Notary Public
State of New York, No. 31-4518068
Qualified in New York County
~~Gen. Filed in Nassau County~~
Commission Expires March 30, 1978

STATE OF NEW YORK
COUNTY OF ~~NASSAU~~

On this 24th day of June, 1977 before me personally came and appeared BRUCE MILLMAN, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


Notary Public

BERNICE KAMEN
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-7415800
Qualified in Nassau County
Commission Expires March 30, 1978

STATE OF ~~New YORK~~
COUNTY OF ~~QUEENS~~

On this 24 day of June 1977 before me personally came and appeared CELESTINE KELLY, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


Notary Public

BRUCE R. MILLMAN, Notary Public
State of New York, No. 31-4518068
Qualified in New York County
~~Gen. Filed in Nassau County~~
Commission Expires March 30, 1978

BRUCE R. MILLMAN, Notary Public
State of New York, No. 31-4518068
Qualified in New York County
~~Gen. Filed in Nassau County~~
Commission Expires March 30, 1978

STATE OF NEW YORK
PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED

SEP 19 1977

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. M76-76

CA-0116

CONCILIATION

In the Matter of the Arbitration

between the

CITY OF NEW ROCHELLE

-and-

UNIFORMED FIREFIGHTERS ASSOCIATION, INC.
LOCAL 273, I.A.F.F.

DISSENTING OPINION OF
CITY REPRESENTATIVE
ON THE ARBITRATION
PANEL.

I emphatically dissent from the supplementary clarification/
opinion of the Chairman of the Arbitration Panel in this case.

One of the parties to this proceeding, dissatisfied with
part of the Panel's award, adroitly raised claims of confusion and
ambiguity in order to have the panel reconsider its award with respect
to Article XII paragraph D of the 1975 contract. These claims consisted
of arguments concerning the history of the clause and equity of the
Panel's initial award, matters which were considered by the Panel in
making that award and not proper grounds for reopening or "clarification."

In any event, the award of the Panel with respect to Issue #6,
i.e. Article XII, Paragraph D of the prior contract, is clear and un-
ambiguous on its face. It is readily apparent from a reading of the
award and the contractual paragraph at issue that Paragraph D of
Article XII which had appeared in the 1975 contract was to continue in
effect in the 1976 contract and be deleted effective December 31, 1976.

Thus, it is improper for the Panel or its Chairman to make any further award on the subject, let alone an award changing the substance of the award.

I note and strenuously object to the Panel Chairman's having issued this supplementary clarification/opinion under these circumstances. I object to the fact that this award was issued without the parties' having had an opportunity to argue before the entire panel on the initial issue of the propriety of reopening the award. I also object to the fact that, having determined to reconsider the matter, the Chairman issued an opinion on the alleged "ambiguity" raised by the Union without convening additional hearings at which all arbitrators on the panel would be present, to hear arguments of counsel on the merits.

Finally, I object to the fact that, although there were ex parte telephone conversations between the Chairman and the two partisan members of the Panel, the Panel was not at any time reconvened to reconsider its award or discuss these issues en banc prior to the issuance of the opinion/clarification of the Chairman.

I most strenuously object to and dissent from the result reached by the Chairman. My own notes of the panel's deliberations, reflected in at least four different places, show that Article XII, Paragraph D was to continue in effect in 1976 exactly as it appeared in the 1975 contract, except that dates would be changed to reflect the 1976 contract year as compared to the 1975 contract year. That is to

say, the Panel had agreed that its intention was that Article XII, Paragraph D be continued for 1976*, thus reading as follows:

In addition to the above provisions, work on holidays shall also be compensated as follows: all unit employees within each rank, i.e. firefighters, lieutenants, captains and deputy chiefs, shall receive an equal lump sum payment based upon their rank's normal salary rate, during the 1976 contract year, as if each employee within such rank had worked an equal number of holidays. The total cost of such holiday pay shall not exceed one-half the sum of money which would have been spent between September 2, 1975 through July 4, 1976 if unit employees previously scheduled for a normal tour on the eleven holidays listed in "B" above had performed work service as scheduled and had therefore been paid straight time wages for said tour hours falling between 12:01 a.m. and 11:59 p.m. on said days.

The only changes intended were those underlined. This was repeatedly confirmed to me by the other panel members. The Union representative on the panel suggested that we insert "5 1/2 days' pay" at some place in the agreement. However, this was never agreed to. It was acknowledged by all parties, however, that the operation of the clause in 1975 should continue intact in 1976. At all times, the parties were agreeable to the above quoted substitution of language. It was in part proposed by the Union's representative on the panel. On several occasions, I made the suggestion that to avoid any future question or attempt to alter our intentions, the Panel ought to include in its award a quotation of the language as agreed and quoted above. It was only because of the express assurances of the Panel Chairman, that this would not be necessary and that the intent of the award was as I have

*As the panel's award explicitly states

above stated (which is indeed clear from the original award of the panel as rendered) that I did not insist upon the language being quoted in full as I had requested. Indeed, as the Chairman states, "a higher degree of specificity on the Panel's part" would have eliminated the current dispute!

Furthermore, the Chairman has noted in this opinion, as well as in his original opinion, that the award of the Panel resulted in part from compromises reached in the course of Panel discussions. In particular, the Chairman does recall that the Union agreed to drop the recommended dental plan as a condition for a one year extension of "the paragraph language." Nevertheless, the Union has belatedly (and, apparently, successfully) sought to change that language by falsely raising issues of alleged "confusion." This is clear from the fact that the new interpretation of the Chairman would require deletion of the words "one-half" in the second sentence of the paragraph, a change which was never discussed, agreed to, nor intended among the panel members in our original deliberations nor mentioned in the award.

I also point out that by agreeing to this change the Chairman has substantially altered any compromises reached on some of the issues before the Panel. The reason is obvious. He has substantially altered the total economic package which results from the arbitration award. To this extent, I am compelled by his decision to now dissent from the entire award of the panel. My conclusion is prompted in no small part by the reconsideration of this issue independently and subsequently to

the remainder of the award. Although I do not by any means intend to impugn the motivations or actions of the Chairman, I do believe that the arbitration award of this Panel has been distorted and tampered with by all that has happened since the award was first issued.

Dated: September 12, 1977


Bruce R. Millman
City Representative on Arbitration
Panel

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. M76-76
JUN 11 1976

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

Case No. M76-76
CA-016;

* * * * *
In the Matter of the Arbitration
between the
CITY OF NEW ROCHELLE
and
UNIFORMED FIREFIGHTERS ASSOCIATION INC.
LOCAL 273 I.A.F.F.
* * * * *

SUPPLEMENTARY
CLARIFICATION/OPINION
CHAIRMAN
PUBLIC ARBITRATION
PANEL
THOMAS F. CAREY
CHAIRMAN

The City and the Union in the instant proceedings have expressed a need for clarification of Issue #6 Holidays - Paragraph b (p. 36) which stated:

The existing Paragraphs "A" and "D" shall be deleted effective December 31, 1976. Prior benefit under Paragraph "D" above (i.e. payment for holidays worked) is to be paid retroactively for the 1976 calendar year.

The original language of Article XII, Paragraph D 11 (p. 7) in the 1975 Agreement provides for the following:

In addition to the above provisions, work on holidays shall also be compensated as follows: all unit employees within each rank, i.e. fire-fighters, lieutenants, captains, and deputy chiefs, shall receive an equal lump sum payment, based upon their rank's normal salary rate, during the life of this agreement, as if each employee within such rank had worked an equal number of holidays. The total cost of such holiday pay shall not exceed one-half the sum of money which would have been spent between September 2, 1974 through July 4, 1975 if unit employees previously

scheduled for a normal tour on the holidays listed in "B" above had performed actual work service as scheduled and had therefore been paid straight time wages for said tour hours falling between 12:01 A.M. and 11:59 P.M. on said days.

The 1975 Agreement was not executed by the Parties until December 3, 1975 with its general provisions being "retroactive to January 1, 1975."

However, the implementation of Article XII, Paragraph D was to become effective only on July 1, 1975 thus reducing the actual "pay out" required for Fiscal 1975 from "5 plus" days to "2 plus" days per firefighter. During the past few weeks several extended discussions have taken place between the Chairman and Counsel for the City and the Union, as well as with the Employer and Employee representatives on the Panel. The Parties and the partisan Advocates differ on whether the "AWARD" of this Panel reflects the "5 plus" or "2 plus" benefit for Fiscal 1976.

The City's panelist maintains that he agreed to extend the Paragraph D language into Fiscal 1976 only if it were interpreted exactly as it was in Fiscal 1975 (i.e. 11 days x $\frac{1}{2}$ implemented July 1).

The undersigned, as Chairman, has checked the notes and the records before me and find that the Union panelist agreed to drop the recommended Dental Plan proposed as a condition for a one year extension of the Paragraph D language.

Further in seeking to develop the language for the recommendation on Issue #6, it was originally contemplated and discussed by the Arbitration Panel that we "use the contract language on page 7 of the 1975 Agreement, change the dates, and insert $5\frac{1}{2}$ days." This approach was subsequently superseded by the AWARD language as it finally appeared.

This decision was based on the judgement that the "calculations" could be done by the City Administration since varying rates of compensation were involved.

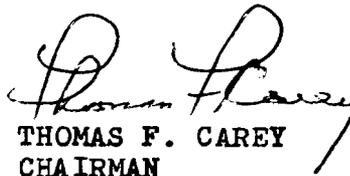
In retrospect, a higher degree of specificity on the Panel's part as originally contemplated would have eliminated the current dispute on language interpretation. The question of whether the "intent" of the recommendation and AWARD on Issue #6, Paragraph b was to result in the "5 plus" or "2 plus" holiday benefit is substantially responded to in the "Opinion of the Chairman" (pp 27-28) which states:

The partisan Panelists sought to strike a balance on this issue in relation to the proposed adjustments in holidays, vacations and wage benefits. The Union partisan on the Panel estimates that the extra 8/10 hours per week per man represents 40 hours a year per man or a "loss to the Union" of \$50,780. Conversely, the City gains by the proposed elimination of Section D of Article XII. This represents a potential savings of \$52,706 per year. The current compensation for the 5.2 average holidays worked per man per year is to be incorporated and subsumed under the revised holiday contract language (i.e. Paragraphs A and D are eliminated and a revised Paragraph A calling for 11 paid holidays and an increase of 88 tour hours of work.)

While there is an honest, understandable variation in the individual recollections of the partisan Panelists, it is the opinion and finding of the Chairman that the recommended implementation in Fiscal 1976 of the language of Article XII, Paragraph D was to be for the full year. The benefit in the instant AWARD is to be retroactive to January 1, 1976 or the full Fiscal year and not only until July 1 as had occurred in Fiscal 1975. The resultant "pay out" would be the "5 plus" (or previously cited 5.2 day) holiday pay benefit.

We so find.

August 26, 1977


THOMAS F. CAREY
CHAIRMAN